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SECOND AMENDED PROTECTIVE COVENANTS

OF

WESTSIDE TRAILS SUBDIVISION

BROADWATER COUNTY, MONTANA

**SECOND AMENDED PROTECTIVE COVENANTS OF WESTSIDE TRAILS
SUBDIVISION FULLY SUPERCEDING AND REPLACING ALL FORMER
COVENANTS**

BROADWATER COUNTY, MONTANA

This Second Amended and Restated Second Amended Covenants of Covenants, Conditions, and Restrictions for the Subdivision ("Second Amended Covenants") is made this 26 th _____ day of _____ December, 2024.

Pursuant to **First Amended Covenants of Protective Covenants, Conditions and Restrictions for Westside Trails Subdivision, Broadwater County Clerk and Recorder's office on June 22, 2026, Doc No. 175268** in the Clerk and Recorder's Office of Broadwater County, Section 17A, amendments, the Covenants may be amended as follows:

These covenants, or any portion thereof, may be amended, abandoned, terminated, modified or supplemented at any time by the written consent, duly recorded with the office of the Clerk and Recorder of Broadwater or Jefferson County, Montana, of the owners of seventy-five percent (75%) of the privately owned land included within the boundaries of the subdivision, one (1) vote for each lot owned.

Notwithstanding the procedure set forth above, until 75 percent of the Lots are sold, Three Forks Properties, LLC may amend the Covenants at any time by filing an amendment with the Broadwater County Clerk and Recorder' Office.

As of this date less than 75% of the Lots have sold. Therefore, Three Forks Properties, LLC has the right, as the developer, to amend the Covenants.

The Second Amended Covenants restates and supersedes in its entirety the Original Covenants of Protective Covenants, Conditions and Restrictions for Westside Trails Subdivision, Broadwater County Clerk and Recorder's office on November 10, 2008, Book 118, Page 287, Doc No. 159840 and the First Amendment to the Original Covenants, June 22, 2016, Doc No. 175268, and any other Amendments filed before the date of this Second Amendment.

These Second Amended Covenants imposes upon the Property, as defined herein, mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Property.

All of the Property described in **Exhibit A** of these Second Amended Covenants and any additional property subjected to these Second Amended Covenants by Supplemental Amended Covenants, and all improvements placed or constructed thereon, shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with title to, the real

property subjected to these Second Amended Covenants. These Second Amended Covenants shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1: DEFINITIONS

The terms in these Second Amended Covenants shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below:

1.1 Act.

Act means the Montana Nonprofit Corporation Act, §35-2-101 et seq., MCA, as amended.

1.2 Accessory Building

Any building which is detached from the Primary Dwelling used for purposes which are incidental and subordinate to the Residential Use of the Primary Dwelling; including but not limited to storage units and green houses. This definition does not include Accessory Dwelling Units, which are defined below. This definition does not include children's playground equipment.

1.3 Accessory Dwelling Unit

Accessory Dwelling Unit means a secondary residential unit, either in a separate structure, within the Primary Dwelling or above the garage, which exists for the purpose of housing a person(s) and must contain sleeping, cooking and complete sanitary facilities.

1.4 Antenna

Antenna means any cell tower, television or radio antenna, "C.B." antenna, satellite dish, over the air reception device, microwave transmitting or receiving antenna, or other antenna, transmitting or receiving device or communications structure or equipment of any type.

1.5 Architectural Review Committee or ARC.

Architectural Review Committee or ARC means the committee created pursuant to **Architectural Guidelines**.

1.6 Architectural Guidelines.

Any instruments adopted by the ARC or the ARC has accepted jurisdiction over for the regulation and management of the Property or any portion thereof with

respect to any matter that the ARC is authorized to review or for which the ARC is authorized to established standards, as the same may be amended from time to time.

1.7 Area of Common Responsibility.

Area of Common Responsibility means the Common Open Space, Parks, Roadways, Internal Trails, and any other areas that by the terms of these Second Amended Covenants, or other applicable covenants, contract, or agreement with the City, are or become the responsibility of the Association to maintain.

1.8 Articles of Incorporation or Articles.

Articles of Incorporation or Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto from time to time.

1.9 Assessments.

Assessments means, collectively, the categories of assessments as established herein, being Base Assessments, Default Assessments, Special Assessments, or any other assessments as may be established by the Board.

1.10 Association.

Association means the Westside Trails Homeowners' Association, Inc. a Montana nonprofit corporation, which meaning shall include successors and assigns.

1.11 Association Expenses.

Association Expenses means allocations to reserves for, and all costs, expenses and liabilities incurred by or on behalf of the Association for, **(a)** operating, maintaining, repairing, replacing and improving Area of Common Responsibility; **(b)** administering and enforcing the Governing Documents; **(c)** levying, collecting and enforcing the Assessments, charges, liens, and other expenses imposed pursuant to the Governing Documents; **(d)** performing any and all Functions permitted by this Second Amended Covenants or any Governing Document; **(e)** operating the Association; and **(f)** any other cost or expense legally incurred by the Association.

1.12 Base Assessment.

Base Assessment has the meaning given to it in **Article 4**.

1.13 Board of Directors or Board.

Board of Directors or Board means the body responsible for administration of the Association, as established in the Bylaws.

1.14 Bylaws.

Bylaws means the Bylaws of the Association adopted by the Association and any amendments and restatements thereto from time to time.

1.15 Commercial Use.

Commercial Use means any enterprise or enterprises of any kind for profit or nonprofit that is not a Home Occupation and/or In Home Business; including but not limited to any retail or wholesale activity such as: shops, stores, care facilities, rental and repair operations, reclamation projects, commercial kennels, or any other Business that necessitates consumer traffic or activity on a temporary or permanent basis.

1.16 County.

County means Broadwater County, Montana.

1.17 Second Amended Covenants.

Second Amended Covenants means this Second Restated and Revised Second Amended Covenants the Westside Trails Subdivision and includes all amendments, restatements or supplements hereafter recorded in the Public Record.

1.18 Declarant.

Declarant means Three Forks Properties, LLC, a Montana limited liability company, or any successor, successor-in-title, or assign who is designated as the Declarant by Three Forks Properties, LLC or any successor Declarant in a written instrument recorded in the Public Record and who succeeds as Declarant pursuant to the terms of this Declaration.

1.19 Declarant Control Period.

Declarant Control Period means the period of time during which the Declarant is entitled to certain rights as enumerated in this Declaration, some of which expires on the Turnover Date and some expire upon the sale of the last Lot.

1.20 Declarant's Rights.

Declarant's Rights has the meaning given to it in **Section 12.3**. Other Declarant Rights in Article 12 run with the land.

1.21 Declaration.

Declaration means this Declaration of Protective Covenants, Conditions and Restrictions for Westside Trails Subdivision, Phases 1-4 and includes all amendments, restatements or supplements hereafter recorded in the Public Record.

1.22 Default Assessment.

Default Assessment has the meaning given to it in **Article 4**.

1.23 Design Review.

Design Review means a review of plans, renderings, manufacturer's literature, or other visual communications tool that reviews all Lot Alterations, for the purpose of ensuring that any Lot Alteration to any property within the Association will enhance the overall positive character of the Association and that the Lot Alteration(s) will conform with these Covenants, the Association Bylaws and any other rules adopted by the Association.

1.24 Dwelling or Dwelling Unit.

A structure which exists for the purpose of housing a person(s) and must contain sleeping, cooking and complete sanitary facilities.

1.25 Eligible Holder.

Eligible Holder shall have the meaning given in **Section 10.1**.

1.26 Firearms.

Firearms means any shoulder-mounted or hand held instrument that propels one or more projectile as the result of ignition of gunpowder. BB guns and air or compressed gas pellet guns are excluded from this definition.

1.27 Function.

Function means any activity, function or service listed in this Second Amended Covenants which is required or may be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

1.28 Good Standing.

Good Standing means that a Member is current on the payment of such Member's Assessments, is not deemed by the Board to be in violation of the Governing Documents and is current on any other payments deemed by the Board to be due and owing to the Association.

1.29 Governing Documents.

Governing Documents collectively means this Second Amended Covenants, Bylaws, Articles, Rules and Regulations, Architectural Guidelines, and resolutions of the Board, all as amended from time to time.

1.30 Home Occupation and/or In Home Business:

(a) Cottage industry

Small scale, non-retail endeavors for profit or nonprofit performed by the Lot more akin to a hobby than to a commercial enterprise which generates little to no consumer or vendor traffic and is not disruptive to Association Members as determined by the Board of Directors

(b) A Consultation or Business office

Used to provide a service or product for profit or nonprofit and generates little to no consumer or vendor traffic and is not disruptive to Association Members as determined by the Board of Directors

(c) Rental

For Residential Use as permitted by these covenants.

(d) Garden Produce

The planting, caring and harvesting of gardening produce for sale.

1.31 Improvements.

Improvements means all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, Accessory Buildings, all exterior surfaces including the surface finish thereof; and other amenities that are part of the Property; mailbox structures; children's play structures; decks; canopies; patios; awnings; gardens; sprinkler systems and other landscaping

1.32 Industrial Use.

Industrial Use means the processing, manufacture, production, sale and/or bulk storage of raw materials for the ultimate use of making a finished good; included the extraction thereof; such as mining or lumbering as well as refining, smelting and milling. The makings of hay and growing crops is not an industrial use.

1.33 Internal Trails.

Internal Trails means those trails within the Property, for non-motorized (other than for maintenance or in the case of emergency) use by Owners and their Invitees.

1.34 Interval Ownership.

Interval Ownership means the holding of rights by which ownership of real property is subject to programs of ownership or use for the operation of a timesharing, fractional ownership, fraction sharing or similar shared or scheduled occupancy program.

1.35 Invitee.

Invitee means any family member, customer, agent, employee, independent contractor, guest or invitee of a Member.

1.36 Junk Vehicle.

Junk Vehicle adapted from MCA § 75-10-501 (2019), means any discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, which is not lawfully and validly licensed or remains inoperative or incapable of being driven.

1.37 Licensee.

Licensee means any Person who occupies or uses a Dwelling Unit pursuant to a lease, license, occupancy agreement, concession agreement or under color of any other arrangement with an Owner.

1.38 Livestock.

Livestock means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, emus, goats, alternative livestock as defined in M.C.A. 87-4-406, and other animals for purposes of disease prevention, control, and eradication as defined in M.C.A. § 81-2-702 (2023 and as amended.)

1.39 Lot.

Lot means a legally described division of real property within the Property as depicted on the Plat or certificate of survey recorded in the Public Record, as may be amended from time to time. The term does not include any portion of a Park or Common Open Space.

1.40 MCA.

MCA means the Montana Code Annotated 2023 and any subsequent amendments.

1.41 Member.

Member means any person(s) or entity that is the Owner of the Lot.

1.42 Membership.

Membership means a membership in the Association that is appurtenant to the ownership of a Lot within the Property.

1.43 Mobile Homes/House Trailers

Mobile Homes/House Trailers means mobile homes/house trailers as defined in M.C.A. § 15-24-201 (2023) and any amendment thereof. In addition, mobile homes are also defined as a Recreational Vehicle which is inhabited for: 1. more than five (5) consecutive days; or 2. more than twenty (20) days in any given year.

1.44 Modular/Manufactured Home.

Modular/Manufactured Home means manufactured home as defined in M.C.A. § 15-24-201 (2023) and any amendments thereof.

1.45 Mortgage.

Mortgage means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed relating to all or a portion of the Property.

1.46 Owner.

Owner means one or more Persons, who hold record title to any Lot, but excluding **(a)** contract purchasers or holders only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, **(b)** the Association, and **(c)** those having an interest merely as security for the performance of an obligation; *provided, however*, that such a holder may be subject to payment of Assessments from and after the time of commencement of a foreclosure or other effective transfer procedures until the time that such procedures have been abandoned or completed and all redemption periods have expired.

1.47 Permitted Household Pets.

Permitted Household Pets has the meaning given to it in **Section 6.2**.

1.48 Person.

Person means any natural person, corporation, partnership, limited liability company, association, trust, or any other legal entity.

1.49 Plat.

Plat means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications that satisfies the requirements of the Montana Subdivision and Platting Act and City requirements recorded in the Public Record. The initial use of the word Plat shall refer to the Final Plat of Spring Meadows Subdivision [Plat Reference J-145].

1.50 Poultry.

Poultry means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants as defined in M.C.A. § 81-2-702 (2023 and as amended)

1.51 Primary Dwelling.

Primary Dwelling means the main Dwelling on a Lot which exists for the purpose of providing living accommodation for resident(s) and must contain sleeping, cooking and complete sanitary facilities.

1.52 Property.

Property means the real property described in **Exhibit A**.

1.53 Public Record.

Public Record means the office of the Clerk and Recorder of Broadwater County where land records are recorded or filed.

1.54 Quorum.

Quorum has the meaning adopted in the Bylaws.

1.55 Recreational Vehicle.

Recreational Vehicle means a conveyance capable of transporting or housing people or their large animals (like horses and llamas) for short-term recreational purposes, including but not limited to camping trailers, class A, B or C motor homes, horse trailers, boats, snowmobiles, all-terrain vehicles, and trailers for transporting such vehicles.

1.56 Residential Use.

Lans, buildings and/or structures or portions thereof used, designed, or intended to be used as living accommodation for one or more individuals.

1.57 Roadway.

Roadway means a street or roadway (but excluding driveways) within the Property or a street or roadway providing primary or secondary access to the Property.

1.58 Rules and Regulations.

Rules and Regulations mean any instruments adopted by the Association for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

1.59 Single Family.

Single Family means one or more persons living as a single, non-profit, housekeeping unit, as distinguished from a group occupying a hotel, motel, club, fraternity or sorority, commune and the like. Members of the unit must have equal access to the cooking and sanitary facilities.

1.60 Special Assessments.

Special Assessments has the meaning given to it in **Article 4**.

1.61 Structure.

Anything constructed or erected on a Lot, the use of which requires location on the ground or attachment to something having location on the ground. Structure does not include any child play structures that are no more than twelve feet above the Residence ground level and not more than ten percent of the footprint of the Residence.

1.62 Supplemental Second Amended Covenants or Covenants.

Supplemental Second Amended Covenants or Covenants means an amendment or supplement to this Second Amended Covenants filed pursuant to **Article 11** which subjects additional property to this Second Amended Covenants, removes property from this Second Amended Covenants, and/or imposes, expressly or by reference, additional, modified or restated restrictions and obligations on all or any portion of the Property.

ARTICLE 2: CERTAIN FUNCTIONS AND GENERAL RIGHTS OF ASSOCIATION.

2.1 General Functions of the Association.

The Association may undertake and perform functions as the Board deems reasonable or necessary to carry out the provisions of this Second Amended Covenants. Subject to the limitations set forth in this Second Amended Covenants, the Association is authorized to expend reserves in order to fulfill the Functions of the Association.

2.2 Records.

The Association shall maintain its records in accordance with applicable law and the Bylaws.

2.3 Taxes.

The Association shall pay or cause to be paid all *ad valorem* real estate taxes, special improvement and other assessments (ordinary and extraordinary), *ad valorem* personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon, or arise in connection with, the Area of Common Responsibility or Functions.

2.4 Powers and Rights of the Association.

The Association shall have and may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The powers and rights of the Association include, but are not limited to, the right to:

(a) Adopt and amend the Bylaws

By a vote of the membership, with such consents as are required pursuant to the Bylaws;

(b) Adopt and amend budgets; Levy and Collect Assessments

For revenues, expenditures and reserves and levy and collect Assessments from Members;

(c) Make capital expenditures, incur liabilities, enter into contracts and agreements, and provide services and functions as are necessary to effect the business of the Association, including, but not limited to, hiring and discharging agents, and independent contractors;

(d) Perform any function, including, without limitation, by, through or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, private entity or any non-profit organization, as may be necessary or desirable;

(e) Emergency Access to Lots

Enter any Lot for emergency and safety reasons, to perform maintenance in accordance with this Second Amended Covenants, to protect persons and property,

and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner of the applicable Lot. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Dwelling Unit without permission of the Owner except by emergency personnel acting in their official capacities. The rights set forth in this provision shall not obligate the Board or the Association to exercise any such rights or to undertake any of the actions set forth in this provision;

(f) pay the expenses of the Association, and provide for the use and disposition of any insurance proceeds in the event of loss or damage;

(g) purchase insurance policies to protect the real and personal property of the Association, including the Area of Common Responsibility, against casualty or loss and to protect the Association, officers, directors, and Staff (when acting in their official capacity) from liability (the extent and specific nature of coverage shall be determined by the Board in accordance with Article 9.1);

(h) provide for the indemnification of the Association's Officers, Directors and Committee members

(i) borrow funds in order to pay for any expenditure or outlay authorized by the Governing Documents, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign its right to future income, including, without limitation, the right to receive Assessments, as security for any borrowed funds; *provided, however*, that the Association shall not use in excess of seventy-five percent (75%) of the Association's total reserve funds or pledge assets with a value in excess of seventy-five percent (75%) of the total value of all Association assets as collateral for any borrowed funds without the Affirmative Vote of a Majority of Association members;

(j) obtain and pay for legal, accounting and other professional and expert services;

(k) deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state and federal basis to carry out the powers, duties and responsibilities herein;

(l) institute, defend or intervene in litigation, arbitration, mediation, or an administrative proceeding in its own name on behalf of itself on matters affecting

the Property or Area of Common Responsibility or take such action as it deems necessary to enforce the Governing Documents;

(m) in its discretion, appoint Persons to generally supervise and control the business of the Association and delegate certain powers, duties and responsibilities to such Persons;

(n) adopt fines and a procedure for due process; and

(o) settle any lawsuits where the Association finds the settlement reasonable even if the settlement does not comply with the Governing Documents.

(p) Any other powers granted to the Association under the Non-Profit Act or any Governing Document.

2.5 Right to Make Rules and Regulations.

(a) The Association is authorized to and has the power to adopt, amend and enforce Rules and Regulations applicable to the Property with respect to the Area of Common Responsibility and with respect to any Function, and to implement the provisions of the Governing Documents, including, but not limited to, Rules and Regulations: to (i) prevent or reduce fire hazard; (ii) prevent disorder and disturbances of the peace; (iii) regulate pedestrian and vehicular traffic; (iv) regulate household animals and other allowed animals, the environment and environmental practices; (v) regulate signs; (vi) regulate any use of any and all Area of Common Responsibility to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; (vii) promote the general health, safety and welfare of persons within the Property; and (viii) protect and preserve property and property rights.

(b) The ARC is authorized and empowered to adopt, accept jurisdiction over, amend and enforce Architectural Guidelines applicable within the Property and is authorized to establish standards, including but not limited to, new Architectural Guidelines or revised Architectural Guidelines and procedures to be followed and material which must be provided by any Member or such Member's authorized agents in order to obtain review of proposed Construction Activity by the ARC.

(c) The Association and ARC may provide for enforcement of any Rules and Regulations adopted and Architectural Guidelines adopted, as the case may be, through fines, penalties, restriction of access or otherwise.

(d) Each Member, Licensee, and Invitee is hereby deemed to have notice of all Rules and Regulations adopted by the Association and Architectural Guidelines adopted by the ARC, whether or not the same have been recorded, and shall be obligated to and shall comply with and abide by such Rules and Regulations and Architectural Guidelines, and pay such unpaid fines and penalties which shall be

enforceable in accordance with **Article 8**. Any current or potential Member, investor, lender or purchaser in relation to the Property may request that the Association or ARC provide a copy of the Rules and Regulations and the Architectural Guidelines to such Member, potential Member, investor, lender or purchaser. Upon the new adoption or material amendment of Rules and Regulations and Architectural Guidelines, the Association or ARC shall provide all current Members affected by such Rules and Regulations or Architectural Guidelines with copies of such documents or notification of the adoption of such documents and notice as to where copies may be obtained. Copies of such documents may be made available from the Board Each Member is obligated to inform all Licensees and Invitees of the obligations and restrictions set forth in the Governing Documents and to cause such Licensees and Invitees to comply with such obligations and restrictions; *provided, however*, that failure to so inform any Licensees or Invitees shall not impair the enforceability of any Governing Document.

2.6 Right to Acquire, Dispose and Improve Association Property.

The Association may acquire (by gift, purchase, lease, trade or any other method), own, operate, build, manage, maintain, rent, sell, develop, encumber, abandon, dispose of and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein; except that the Association may not convey any real property or Improvements owned by the Association without the Affirmative Vote of a Majority of the Members The Association may cause additional Improvements to be made as part of the real property it owns or Area of Common Responsibility, including, without limitation, the construction of any capital asset, in whole or in part, for the benefit of some or all of the Members, Licensees or Invitees, subject to the restrictions set forth herein. The Association may grant easements, leases, licenses and concessions through or over real property owned by the Association, including, but not limited to, easements (including conservation easements), rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property, for the purpose of accommodating minor encroachments onto the real property owned by the Association or other purposes that do not unreasonably interfere with the use and enjoyment of the Area of Common Responsibility.

2.7 Records.

The Association shall maintain its records in accordance with applicable law and the Bylaws.

2.8 Taxes.

The Association shall pay or cause to be paid all *ad valorem* real estate taxes, special improvement and other assessments (ordinary and extraordinary), *ad valorem* personal property taxes, and all other taxes, duties, charges, fees and

payments required to be made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon, or arise in connection with, the Area of Common Responsibility or Functions.

2.9 Conflicts Hierarchy.

In the event that there is any conflict or inconsistency between the provisions of Montana law, this Second Amended Covenants, the Articles, the Bylaws, the Rules and Regulations or other governing documents or rules, the provisions of Montana law, this Second Amended Covenants, the Articles, the Bylaws, the Rules and Regulations or other governing documents or rules (in that order) shall prevail. In the event that there is a conflict of inconsistency between an Ordinance and this Second Amended Covenants, the more restrictive of the two shall control. In the event there is a conflict between this Second Amended Covenants and any Supplemental Second Amended Covenants, the Supplemental Second Amended Covenants shall control, and in the event there is a conflict between any Supplemental Second Amended Covenants, the Supplemental Second Amended Covenants most recently recorded in the Public Record shall control.

ARTICLE 3: MEMBERSHIP, VOTING AND BOARD OF DIRECTORS

3.1 Regular Membership.

Every Owner shall be a Member of the Association. There shall be only one Membership attributable to fee simple ownership of a Lot.

3.2 Appurtenant Rights.

Membership in the Association shall be limited to Owners. Each Membership and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to the Lot held by an Owner. The Owner shall hold the Membership appurtenant to that Lot as set forth herein and title to and ownership of the Membership shall pass automatically with fee simple title of a Lot, no matter how such title or interest is acquired. Membership may not be transferred separately from the fee simple title of a Lot.

3.3 Membership Obligation.

No such Person who is an Owner shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use any Area of Common Responsibility or is the beneficiary of any Function of the Association. The obligations of each Owner under this Second Amended Covenants are mandatory, including, but not limited to, the payment of ongoing

Assessments, and all obligations of each Owner set forth herein, regardless of when specific obligations arise or become payable during the term of any Owner's ownership of a Lot are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

3.4 Joint Ownership; Joint and Several Liability.

If an Owner's interest in a Lot is held by more than one Person (in tenancy in common, as joint tenants, or otherwise), the Membership appurtenant to such Lot shall be shared by all such Persons in the same proportionate interest and by the same type of ownership as the Lot is held, subject to reasonable Board regulation and restrictions on voting, notices, and Assessment obligations as set forth in this Second Amended Covenants, the Bylaws or otherwise. All such Persons shall be jointly and severally obligated to perform the responsibilities of the specific Owner. The Association shall not have any obligation to confirm, as among such multiple interest owners, which of the Persons has the right to exercise a vote. In the case where there are multiple owners of one Lot, written notice shall be provided to the Secretary of the Association stating which Person has authority to act (including the payment of any Assessments due) on behalf of the Owner(s) and include that Person's name, mailing and physical address, telephone number and email address. The Association shall rely on such notice until such notice is updated by an Owner. In the case where there are multiple Owners of a Lot, the liability of each Owner in relation to the Governing Documents is joint and several.

3.5 Ownership by Corporation, LLC, Trust or other Entity.

If an Owner is an entity (Corporation, LLC, Trust, Limited Partnership, etc.) that legally affords protections for the individual owners of the entity, by purchasing a Lot, the individual Owners agree to waive all such protections regarding any assessments, fines, attorney's fees or any other amount owed to the Association, and agree that the individual Owners are liable to the Association for those amounts owed.

3.6 Submission of Contact Information.

Any Person, upon becoming a Member, shall furnish to the Association a single name and address to which notices to such Member may be sent, as well as an e-mail address and telephone number by which that Person can be contacted. In no event will the Association have any obligation to investigate the address or contact information of any Member.

3.7 Voting Rights of Membership.

Members in Good Standing within the Association shall have one vote per Lot for all voting issues of the Association.

3.8 Board of Directors.

- (a) Number and Qualifications.** The business and affairs of the Association shall be managed by a Board as set forth in the Bylaw.
- (b) Election of Directors** at each annual meeting of the Members, the membership of the Board shall be determined as provided in the Bylaws.

ARTICLE 4: ASSESSMENTS, ASSOCIATION EXPENSES AND OTHER AMOUNTS; LIEN FOR SUMS DUE ASSOCIATION; ENFORCEMENT

4.1 Personal Obligation for Assessments and Other Amounts.

Each Member shall pay to the Association, and be liable for, all Assessments, charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Governing Documents. Each Owner, by accepting a deed or recording a notice of purchaser's interest for a contract for deed for any portion of the Property, is deemed to covenant and agree to pay the Assessments. Each Owner, regardless of how the Property is owned (i.e. corporation, limited liability, trust, limited partnership, etc.), is personally liable for all assessments owed.

(a) Failure of the Board to set assessment rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay these Assessments or the effectiveness of the lien in relation to the Assessments. In such event, each Member shall continue to pay their respective Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new budget becomes effective and new Assessments are levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

(b) No Member may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of such Member's Lot or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Lot. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action the Association or Board takes or any omission to take any such action.

4.2 Verification of Assessments Due.

Upon written request, the Association shall furnish to a Member or such Member's title or mortgage company written verification of the amount of such Assessments owing and whether the Member has paid such Assessment.

4.3 **Purpose of Assessments and Other Amounts.**

The Assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations the Association may incur in performing any actions permitted or required under the Governing Documents, including, but not limited to, operating expenses (inclusive of the overall general administration of the Association), the costs of performing Functions, the cost of all insurance premiums and applicable deductibles for insurance required or permitted under this Declaration, repayment of debt and debt service, providing security for third party obligations (such as, but not limited to, securing borrowing by the Association) as provided in the Governing Documents, maintenance of the Area of Common Responsibility, and all other Association Expenses. The Association may invest any funds allocated to reserves in a reasonable and prudent manner. Unless expressly required by a Governing Document, the Association will not refund or credit to any Member any excess funds (including reserves) collected by the Association.

4.4 **Types of Assessments.**

(a) Base Assessments.

(i) Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Association Expenses during the coming year, including, without limitation, a capital contribution to establish a reserve fund in accordance with a budget separately prepared. The Board shall annually prepare the reserve budget which takes into account the number and nature of depreciable assets owned by the Association, the expected life of each asset, and their expected repair or replacement cost.

(ii) Rate. The Base Assessment shall be levied equally against all Lots which are subject to the Base Assessment pursuant to this Declaration and shall be set at a level which is reasonably expected to produce total revenue for the Association equal to the total budgeted Association Expenses for the benefit of all Owners, including, without limitation, reserves ("**Base Assessment**"). In determining the level of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

iii) Notices. The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the upcoming year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal

year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by at least fifty-one percent (51%) of the Members of the Association.

(iv) Failure to Approve Budget. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the next year.

(b) Default Assessment. Notwithstanding anything to the contrary contained herein, if any cost or expense of the Association is caused by **(a)** the negligence or misconduct of a Member or a Member's family member, employee, agent, Licensee or Invitee, or **(b)** a violation of any covenant or condition of a Governing Document by a Member or a Member's family member, employee, agent, Licensee or Invitee, the Association may, if the Board deems necessary or advisable, levy a default Assessment against such Member. The Association may also, in the discretion of the Board, levy a default Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot and Dwelling Unit into compliance with the provisions of the Governing Documents, provided the Association gives prior notice to the Owner and an opportunity for a hearing. Any such assessment levied by the Association pursuant to this **Section (b)**, and each fine, penalty, fee, or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Governing Document, are each referred to herein as a "**Default Assessment**."

(c) Special Assessment. The Association may levy "**Special Assessments**" from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment for Association Expenses for the general benefit of all Owners shall require the Affirmative Vote of a Majority of the Members. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

(d) Reserve Account. The Association may create and fund Reserve accounts.

(e) General Provisions. Any payment or report required hereunder to be made to the Association shall be deemed to have been made in a timely fashion if sent to the principal office of the Association by **(a)** first class U.S. mail, postage prepaid and postmarked no later than the date such payment or report is due, or **(b)** reputable overnight delivery service sent no later than the date such payment or report is due. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Member which are reasonably related to such Member's obligation hereunder to pay Assessments or make reports to the Association. The Board shall have the power to determine any matter and to resolve any dispute arising out of the

application, determination, payment and collection of any Assessment or the making of any report provided for in this Declaration or any other Governing Document, and may promulgate such additional Rules and Regulations which are consistent with the provisions hereof as the Board may deem necessary, useful or appropriate to the reasonable and efficient administration of such

4.5 Time for Payments; Effect of Non-payment of Sums Due Association; Lien and Remedies of the Association.

(a) The amount of any Assessment, charge, fine, penalty or other amount payable by any Member shall become due and payable at such times as the Board may establish.

(b) Any Assessment, charge, fine, penalty, or other amount not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty and bear interest in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees, paralegal fees, and recording fees (as applicable). All such amounts shall be considered Default Assessments.

(c) The Association has a lien on each Lot for any Assessment levied against the Lot, and for any other amounts due hereunder from the Owner in relation to such Lot.

(d) In the event an Owner fails to pay sums due the Association within sixty (60) days of the due date, the Association may **(i)** bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, **(ii)** although not necessary in order to foreclose the lien, record notice of the Association's lien against the property being assessed, **(iii)** send the debt to collections, **(iv)** institute an action for a money judgment, **(v)** apply any deposits held by the Association or ARC to the amount due, and **(vi)** exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty or other amount, including, without limitation, reasonable attorneys' fees, paralegal fees, and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same or may be recovered in any foreclosure.

(e) The recording of this Declaration constitutes record notice and perfection of a lien of the Association on all Lots. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record. The priority of the lien of the Association shall be determined pursuant to **Section 4.6** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public

Record, and shall be binding upon the Owner and its successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Lot is owned by the Association following foreclosure, **(i)** no right to vote shall be exercised on behalf of the Lot, **(ii)** no Assessment shall be assessed or levied on the Lot, and **(iii)** each other Lot shall be charged, in addition to its usual Assessments, its equal pro rata share of the Assessments that would have been charged to or payable by such Lot had it not been acquired by the Association.

(f) The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. Any Assessments or other costs unpaid as a result of a foreclosure shall be deemed to be Association Expenses collectible from all Owners subject to Assessment under this Declaration, including, without limitation, the acquirer at foreclosure, its successors, assigns and transferees.

4.6 Priority and Non-subordination of the Lien.

The lien under this **Article 4** shall be superior to all other liens, except the liens of all taxes, bonds, assessments and other liens and levies which by law in effect from time to time would be superior.

4.7 Liability of Members, Purchasers and Encumbrancers.

The amount of any Assessment, charge, fine, penalty or other amount payable under this **Article 4** payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, estates, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Lot shall be jointly and severally liable with the former owner of the Lot for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

ARTICLE 5: EASEMENTS

5.1 Easements for Encroachment.

There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Dwelling Unit and any adjacent Area of Common Responsibility. Space in between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Second Amended Covenants), or any trail systems, including, without limitation, pedestrian, bicycle, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

5.2 Easements for Utilities, Etc.

The Association specifically reserves the right to convey to the Association or its designee, with respect to the local water/sewer company, and to the local electric company, natural gas supplier, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters, boxes, pump or other utility lines, valves, etc. However, the exercise of this easement shall not extend to permitting entry into a Dwelling Unit, nor shall any utilities be installed or relocated on the Property, except as approved by the Board and with notice to the Owner of the Lot.

Should any Person furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this Section 5.2 shall in no way adversely affect any other recorded easement on the Property.

5.3 Emergency Services Easements.

The Association hereby grants a non-exclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties, subject, however, to limitations generally imposed by local, state and federal law.

5.4 Association Easements.

There is hereby reserved unto the Association and its successors and assigns a non-exclusive, perpetual easement upon, across, above and under the Property for access, ingress and egress in order to **(a)** exercise any right held by the Association under this Second Amended Covenants or any other Governing Document, and **(b)** perform any obligation imposed upon the Association by this Second Amended Covenants or any other Governing Document. The Association shall not enter upon any Lot without reasonable prior notice to the Owner of the Lot and shall not enter any residence or other Improvement of an Owner without the consent of such Owner, in each case except in cases of emergency.

5.5 Acceptance of Easements.

Each Owner, by accepting a deed to a Lot or recording a notice of purchaser's interest for a contract for deed for a Lot, agrees for themselves and their Licensees,

Invitees and successors and assigns, to be subject to all easements created by this Second Amended Covenants and the other Governing Documents.

ARTICLE 6: RESTRICTIONS APPLICABLE TO PROPERTY

6.1 Accessory Buildings/Structures.

Accessory Buildings/Structures shall conform to the architectural style and color of the Residence on the Lot. They shall not be larger than 4,000 square feet. No more than two unattached Accessory Buildings are allowed per Lot. The buildings shall not exceed the height of the highest roofline of the Residence. They shall be made with siding and roofing material that is of similar quality and color as the Residence and have architectural details that will help to blend into the primary home and the neighborhood. Accessory Buildings/Structures shall not have a commercial appearance.

6.2 Animals.

- A. No domestic pets, Livestock or Fowl shall be maintained on any Lot except as provided herein. Domestic pets are defined as any domestic dog, domestic cat, rodent, fish, rabbits or song birds and other birds traditionally kept as household pets (as opposed to livestock or poultry). No more than three outdoor domestic pets may be kept and maintained on any single lot. An outdoor domesticated pet is a pet that is allowed outside the house. Further, such animals shall be restrained and/or leashed at all times. If any animals are caught or identified chasing or otherwise harassing wildlife or people, the Association shall have the authority to have such animal or animals impounded at any available location, and shall assess a penalty against the owner of such animal or animals plus all costs of impoundment on the first occasion. If any such animal or animals are caught or identified chasing or harassing wildlife or people on a second occasion, the Association shall have the authority to have such animal or animals impounded or banished from the Property.
- B. Rules specific to the Keeping of Chickens and Similarly Sized Fowl
 - 1. Definition of Chicken. The use of the word "Chicken(s)" means chickens and other similarly sized Fowl.
 - 2. Number
 - a. Any Owner may have up to a maximum of six (6) total Chickens.
 - 3. Specific Standards for Chickens
 - a. No male Chickens over the age of three months are permitted.
 - b. No Chickens may run at large within the Subdivision. All Chickens must be contained within the Owner's property boundary.
 - c. The Owner must provide the Chickens with a covered, predator-proof Chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chickens. The Chicken house must be adjacent to and provide free access to the Chicken's enclosure.

Any heat source or electrical facilities installed in the chicken house must comply with all adopted buildings codes within the State of Montana.

- d. The Owner will provide the chickens with a predator-proof enclosure of sufficient size to admit free movement of the Chickens. Chicken enclosures may be moveable.
- e. Chickens will be secured within the enclosure from sunset to sunrise.
- f. Chicken enclosures and houses must be kept in a neat and sanitary condition at all times and must be cleaned on a regular basis so as to prevent offensive odors.
- g. Chickens will have continuous access to adequate food and water.
- h. Stored feed must be kept in a rodent and predator-proof container.
- i. Chickens will be maintained in a healthy condition. Ill Chickens will either receive appropriate medical care or be culled.
- j. No chicken house will be located closer than ten (10) feet to any structure inhabited by someone other than the chicken owner, custodian or keeper, and not closer than five (5) feet to any property line. Chicken houses may be moveable but must comply with all standards of this section.
- k. No chicken will be kept in a manner so as to create noxious odors or noise of a loud, persistent and habitual nature.
- l. No chickens will be slaughtered within the public view.

C. Design Regulations for Chicken Enclosures and the Keeping of Chickens

- 1. Lot Owners wishing to keep chickens will submit the following the Design Review Board for approval:
 - a. A sketch identifying the property boundaries, the location of all structures on the property and distances between said structures and between the property boundaries. The sketch must also indicate the location(s) of the chicken enclosure and chicken house.
 - b. What type of chickens will be kept.
 - c. A description of the enclosure and chicken house, including materials used and cubic footage(s).
 - d. Where the party seeking to keep chickens is not the fee owner of the property upon which chickens will be kept, the applicant will obtain the property owner's consent in writing to keep chickens on the property. The owner's consent will be submitted with the design review application.
 - e. Once the application is submitted, along with any necessary permission, the Design Review Committee will review the application for conformance with these covenants. The Design Review Committee will either reject, approve or determine if changes must be made to the enclosure, chicken house or to the number of chickens to be kept, or require mitigation for the

impact to adjacent properties, such as fencing or other screening. If changes must be made to the Design, the Lot Owner must comply with those changes. A person aggrieved by a decision of the Design Review Committee may appeal to the Board who will review all applicable information and issue a decision on the appeal.

- f. Approval of a Design is specific to the Lot Owner and the location of the approval. A person wishing to move chickens to a different property will obtain new approval. A new resident who desires to keep chickens must resubmit for approval only if there is a change to the location of the enclosure, location of the chicken house or in the number or type of chickens.
 - g. Approval of the chickens and structures authorized the Lot Owner to keep the number of chickens in the manner described on the application. Any increase to the number of chickens to six or more up to the maximum number allowed, or a significant change to the manner of keeping said chickens will require a new application and approval.
 - h. Nothing in this section will prevent the Board from requiring an inspection of a Lot prior to or after issuance of approval for any number of chickens.
 - i. Changes to the standards contained in this section will require any Lot Owner to comply with any new standard, regulation or condition.
- D. Any property as of the date of this amendment that currently has livestock or poultry in violation of this provision is allowed to have the same type and same number of animals until that owner transfers the Property to a third party. The new owner must comply with this provision.

6.3 Rules Specific to Horses

- (a)** The Definition of “Horse.” The use of the word “Horse” includes horses, mules, donkeys and ponies.
- (b)** Horses are permitted ONLY on Lots, or a combination of two or more neighboring Lots over 2 acres. No other Livestock is permitted on a Lot.
- (c)** There may only be two Horses per two acres of land.
- (d)** No barn, shelter, corral or pasture fencing or other Lot Alteration relating to Horses shall be placed, constructed, erected, added to or maintained on any lot until building drawings, plans and/or specifications and such other information as the ARC may reasonably require, including without being limited to, size and building materials, have been submitted to, and approved by the ARC in writing.

A barn or other shelter is considered an Accessory Building. Note, if an Owner owns more than one Lot, the barn, shelter and other Accessory Buildings may be built on the Lot without the Primary Dwelling, but only if the Primary Dwelling is being constructed or already exists.

(e) Westside Trails encourages a "natural environment" for the care and management of Horses. Corral areas and enclosures must be regularly cleaned of manure and other animal-related detritus. Manure in corrals, barns or areas of intense use must be removed from the premises in a timely manner. Raking and redistribution of pasture manure is required during summer use.

(f) All pasture areas shall be maintained in accordance with standard agricultural practices, and owners shall not permit overgrazing. Mowing or harvesting of pasture grass not subject to grazing is specifically encouraged to limit fire danger. Rotation of pasture areas is encouraged.

(g) Pasture fencing must be of a type, size and location approved by the ARC. One strand of hot wire on the top rail of perimeter fencing may be allowed after review by Architectural Review Committee, the purpose of which is to discourage the eating or gnawing by animals on the fence, maintain the property and also to limit encounters among neighboring animals.

(h) All lot owners owning or keeping animals on their property shall manage pests such as flies and any other insects by either biological methods or chemical methods as long as either method does not adversely affect the lot owner's neighbors.

6.4 Common Open Space.

(a) Access.

Subject to the provisions of this Second Amended Covenants, each Member, Licensee and Invitee shall have a non-exclusive easement over, upon and across Common Open Space as appropriate and necessary to use it for its intended purposes.

(b) Uses.

Nothing shall be done or kept on the Common Open Space that would result in cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for that activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on the Common Open Space that would be in violation of any statute, rule, ordinance,

regulations, permit or other requirement of any governmental or quasi-governmental entity. No damage to, or waste of, Common Open Space shall be committed, and each Member shall indemnify, defend and hold the Association and other Members harmless against all loss resulting from any such damage or waste caused by such Member, or such Member's Licensee or Invitee. All restrictions contained in this **Article 6** shall be deemed to apply to the Common Open Space.

(c) Ownership.

The Common Open Space shall be owned by the Association.

6.5 Construction Activities.

Unless the approval of the ARC is obtained in advance, **(i)** no Improvements shall be constructed, erected, placed or installed upon any Lot, **(ii)** no change or alteration of the materials or appearance (including, but not limited to, color) of the exterior of any Improvements shall be made, **(iii)** no excavation or change in the grade of any Lot or earth movement shall be performed, and **(iv)** no other Construction Activity shall be initiated or performed. In addition to the Architectural Guidelines, all structures must be constructed in accordance with all applicable Ordinances.

(a) Fire retardant shingles shall be used. Metal roof are allowed. Spark arrestor screens shall be placed on fireplaces and wood stove chimneys. Smoke detectors shall be installed on each level of residences and in each outbuilding.

(b) Each dwelling shall be constructed so as to include not less than 1300 square feet of living space on the main level, exclusive of open porches, patios, carports, garages or basements.

(c) No building, structure, alteration or improvement shall exceed 30 feet in height measured from the average level of finished grade. When finished grade deviates from original grade, the said Architectural Committee may, in its discretion, deny approval of the Lot Alteration if the height of the building is more than thirty (30) feet above the original grade and in the Committee's opinion unreasonably interferes with the view, building sites, elevations and general aesthetic considerations and factors of nearby lots and the subdivision as a whole.

(d) The general area for home sites have been pre-determined so as to best preserve the natural surroundings and views. The Committee has the express authority by these covenants to determine all building site locations.

(e) All Lot Alterations on the Lot shall be diligently prosecuted to completion and shall, in any event, must commence within six (6) months of approval. If it does not, then the plans must be re-submitted for new approval. The Lot Alteration must be completed within twelve (12) months of commencement unless specific

written extension is granted by the Committee. No construction material shall, at any time, be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic and no construction materials shall be placed or stored on lots for a period of more than thirty (30) days following substantial completion of construction as shall be determined by the Committee.

(f) Foundation studies shall be completed for any building site on a slope greater than ten percent (10%). For any foundation or building to be placed on a slope greater than ten percent (10%), copies of the foundation study shall be submitted to the Broadwater County Subdivision Review Office for review as they are completed and prior to construction. Before an Owner builds, it is strongly suggested that the Owner have a geotechnical analysis of the Property completed. Developer was not required and did not have a geotechnical analysis complete within the subdivision. If the Owner chooses not to have such an analysis, the Owner does so at the Owner's own risk.

(g) Drain fields for the septic system shall be located and be of such size as designated on the site plan approved by the Department of Environmental Quality.

(h) All wells must be drilled where designated on the site plan approved by the Department of Environmental Quality. Should an owner use L.P.G., the tanks must be buried underground and properly coated to protect against galvanic action

6.6 Fences.

The design and location of fences must be approved by the ARC. All fence construction (height, location, etc.) must comply with all Ordinances. All fences shall be maintained by the Owner. If the fences' appearance falls below the acceptable regional standards the fences shall be repaired or replaced.

6.7 Land Use.

All lots shall be used for Single-Family private residences only. No more than one Single Family Dwelling shall be allowed on any Lot. No Accessory Dwelling Units are allowed.

(a) Home Occupation.

A gainful "Home Occupation", profession, trade or other non-Residential Use will be a permissible use of a Dwelling Unit, so long as: (i) such use is not prohibited by law, (ii) such use is not otherwise restricted by this Second Amended Covenants, or the other Governing Documents (iii) such use is carried on entirely within Dwelling Unit and is secondary and incidental to its use as a residence, (iv) there is no generation of pedestrian or vehicular traffic beyond that customary or incidental

to Residential Use of the Dwelling Unit, (v) there is no use of commercial vehicles for deliveries to or from the premises beyond that customary or incidental to Residential Use of the dwelling, (vi) there is no on-premises sales of products, (vii) there is no external evidence of any such activity being conducted, such as signs or structures advertising the occupation, and no excessive or unsightly storage of materials or supplies, and (viii) the use is conducted in compliance with the Governing Documents.

(b) Commercial/Industrial Use.

The rental for Commercial Use or Industrial Use of any portion of a property is prohibited. (This shall in no way be interpreted to prohibit a legal renter to have a “Home Occupation” as defined in these covenants.) Commercial equipment such as storage/utility trailers, cargo containers, semi-trucks, construction equipment, farm equipment, and the like, shall not be parked within the Subdivision.

6.8 Maintenance of Lot.

All Lots except for any portion of the Lot then undergoing any Construction Activity on such Lot and all unimproved Lots, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair.

(a) Weeds.

Noxious weeds along roadways and lots will be controlled in accordance with the County Weed Supervisor's recommendations and enforced by the Homeowners Association. Each owner shall be responsible for weed control on their own lot. Both improved and unimproved lots shall be kept free of weeds. If a lot must be cleared of weeds and the Owner fails to do so after notice from the Association, the weeds may be cleared and controlled and the cost and expense associated with such weed maintenance shall be assessed against the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment. The Owner's Association is responsible for weed management on all parks and open spaces.

(b) Trash; Garbage; Organic and Inorganic Materials.

No trash, waste, garbage, litter, junk, refuse, or unused items of any kind shall be kept, stored, thrown, dumped, allowed to accumulate, left or burned on any portion of the Property. All garbage shall be kept in appropriate containers and stored inside the garage or in an ARC approved structure unless put out for collection. After collection, all garbage containers shall be placed back in the garage or ARC approved structure. No incinerator or other device for burning of trash or garbage shall be installed or used.

6.9 Nuisances.

No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or placed on the Property which is or may become a nuisance or cause any disturbance or annoyance to others.

(a) Lights.

All exterior lighting of Improvements and grounds on a Lot will be subject to regulation by the ARC.

(b) Sounds and Odors.

No sound shall be emitted from any Lot or Dwelling Unit which is unreasonably loud or annoying; and no odor shall be emitted from any Lot or Dwelling Unit which is noxious or offensive to others.

6.10 Parking.

(a) Members, Licensees and members of the general public

All home construction must provide for off-street parking for two-vehicles.

(b) Recreational Vehicles

For the purpose of **Section 6.9**, the term “vehicle” does not include “recreational vehicles.” Recreational Vehicles are addressed separately in **Section 6.11**.

6.11 Recreational Vehicles.

No Recreational Vehicle may be parked on the Roadways. The parking of Recreational Vehicles in either a driveway or a street shall be limited to four (4) consecutive days, and no more than thirty (30) days a year. The Recreational Vehicle may be parked year-round on the Property if parked on a permanent parking pad or otherwise screened from view as approved by the ARC. No Recreational Vehicle may be used as living quarters.

6.12 Rental or Lease of Lot.

All Leases must be for a period longer than 3 months.

6.13 Single Family Home

Only one Primary Dwelling will be allowed on a lot. One Accessory Dwelling Units of no more than 1000 square feet shall be allowed. As stated in the definition section, Single Family homes shall be construed to allow the owner of a Lot to purchase additional adjacent Lot(s), place the Primary Dwelling on one of the other Lots and outbuildings and other Lot Alterations allowed within the covenants on the adjacent Lot(s). An ADU may only be built on a Lot with a Primary Dwelling.

The ADU cannot be constructed before the Primary Dwelling, but may be constructed at the same time as the Primary Dwelling. However, the Single Family residence must be constructed before the other Lot Alterations on the adjacent Lot(s), except for barns and shelters for Horses and Chickens.

NOTE: This is NOT a guarantee that any Lot will actually be able to have an ADU. The Department of Environmental Quality has only approved each Lot to have ONE Primary Dwelling. If an Owner would like to construct an ADU, the Owner must amend the DEQ approval with the DEQ to allow for the ADU. The DEQ may not approve the amendment.

6.14 Subdivision, Aggregation, Boundary Line Adjustment of Lots

No Lot or Dwelling Unit shall be subdivided, partitioned, aggregated, or be subject to a boundary line adjustment without the written approval of the Board of Directors. Any further subdivision of a Lot may not contribute additional Dwelling Units within the Property that was divided.

6.15 Unsightliness.

No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) Unsightly structures, facilities, equipment, objects, and conditions

Must be kept within an enclosed structure at all times.

(b) Mechanical and utility equipment

Lines, wires, pipes, cables, tanks, poles, meters and other facilities, shall be screened or kept and maintained below the surface of the ground, or to the extent feasible, customary and sightly as determined by the ARC, within an enclosed structure, subject to exceptions as determined at the discretion of the ARC.

(c) Antennas.

Any Antenna equal to or less than one (1) meter in diameter, that falls within the scope of, or is otherwise covered by the Telecommunications Act of 1995, and the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent federal or state law applicable to common interest communities ("Approved Antenna"), shall be permitted upon any portion of the Property. Installation of any Approved Antenna shall comply with any and all governmental requirements and guidelines, as well as any and all applicable Architectural Guidelines, including, but not limited to, any preferred placement locations; provided, however, that such Architectural Guidelines may not unreasonably increase the cost of installing, maintaining, or using the Approved Antenna,

unreasonably delay installation of the service, or unreasonably interfere with the quality of reception.

(d) Signs.

No signs will be permitted on any Lot, except for temporary signs warning of some immediate danger, temporary construction signs, for sale signs or political signs. Political signs shall be permitted for two months before the election for which the sign is posted occurs. Political signs must be removed within three (3) days of the election for which the sign is posted occurs. Political signs may not be more than a total of six square feet total (height x width). No signs are allowed to flash or rotate. Signs must not be painted on or attached to the exterior of a building.

6.16 Wildlife, Hunting, Firearms.

Except as allowed by Ordinance, hunting, capturing, or killing of wildlife within the Property is prohibited, with the exception of pest control for rattlesnakes. The discharge of firearms is prohibited within the Property. The feeding or domestication of any wildlife is prohibited.

ARTICLE 7: ARCHITECTURAL REVIEW COMMITTEE

7.1 Purpose.

In order to preserve the natural beauty of the Property and its setting, to maintain the Property as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Property, all exterior design, development, Improvements, including, but not limited to, new Improvements and additions, changes or alterations to existing uses or Improvements, and Construction Activity at the Property shall be subject to review and approval by the ARC pursuant to this **Article 7**.

7.2 ARC Members.

The ARC shall consist of at least three (3), but not more than five (5) persons. The Board shall appoint the members of the ARC, who shall serve at the discretion of the Board.

7.3 Powers and Duties.

Neither the Association, nor any Member, Licensee, Invitee nor any occupant shall change the use of any Lot or building or structure thereon or engage in any Construction Activity unless the ARC has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with this **Article 7**, including, without limitation, compliance with applicable law, the Governing Documents and any Supplemental Second Amended Covenants. The

ARC has the express authority to review, accept, condition, modify or deny all plans for any of the activities described in this **Section 7.3** to the extent they conflict with the Architectural Guidelines adopted by the ARC or are not compatible with, or are inappropriate for, the Property. In addition to the above powers and duties, the ARC may have such powers and duties as delegated to it by the Board.

7.4 Coordination with Board.

Notwithstanding anything else contained in this Second Amended Covenants, the Architectural Committee shall be structured as follows: The Architectural Committee is an agent of the Board and its power is a delegation of the Board's overarching power. The Architectural Committee shall work in coordination with the Board pursuant to published guidelines that may be adopted and amended by the Board to best protect the values of the Association and the proper functioning of the Architectural Committee.

7.5 Architectural Guidelines

The ARC shall have the authority to establish new Architectural Guidelines, revise existing Architectural Guidelines or enforce existing Architectural Guidelines. Architectural Guidelines adopted by the ARC shall provide reasonable rules and procedures as the ARC deems necessary to carry out its functions, which Architectural Guidelines shall not be inconsistent with the provisions of the other Governing Documents. Architectural Guidelines adopted by the ARC shall state the general design theme of all projects in the Property, specific design and construction requirements, and the general construction procedures that will or will not be allowed in the Property.

Each Member is hereby advised and acknowledges that, in connection with any Construction Activities on such Member's Lot, such Member must comply with the applicable provisions of Supplemental Second Amended Covenants, Architectural Guidelines adopted by the ARC, and the Governing Documents, which documents may include, among other things, the following: **(i)** procedures for making application to the ARC for design review approval, including, without limitation, the documents and materials to be submitted and the process the ARC must utilize to approve or disapprove any submission; **(ii)** time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under such documents; **(iii)** minimum and maximum square foot areas of living space and non-habitable or non-living space that may be developed on any Lot; **(iv)** landscaping and irrigation regulations or limitations; **(v)** the nature, kind, shape, height, color, materials and location of Improvements, parking, landscaping, the scale of development, maximum floor area and other dimensional limitations, impervious surface, and any other matter regulated pursuant to **Article 7**.

7.6 Meetings of the ARC

The ARC shall hold meetings as necessary. Meetings of the ARC may be called by Staff, the chair of the ARC or by a majority of the members of the ARC. All meetings of the ARC shall be open to Members, as well as to any designated professional representatives thereof, and all votes of the ARC shall be taken at such meetings. Nothing contained herein, however, shall prevent the ARC from meeting in executive session, not open to Members, in relation to personnel matters, litigation in which the Association or the ARC is or may become involved, matters subject to privileges and confidentiality obligations, and matters relating to the formation of contracts with third parties. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following open meeting. The ARC may, determine that ARC members may participate in a specific meeting by telephone so long as such telephone participation will not unreasonably interfere with such ARC member's ability to perform its duties (*e.g.*, review visual designs of samples to be presented at the meeting).

A majority of the members of the ARC shall constitute a quorum.

The ARC shall maintain written minutes of its meetings and a record of any votes taken. A copy of all minutes, Architectural Guidelines and policy statements, shall be filed with the records of the Association and shall be maintained by the Association in accordance with its retention and record keeping policies.

7.7 Approvals and Consents of the ARC

Approvals and consents of the ARC shall not be arbitrarily and capriciously withheld, and actions taken shall not be arbitrary and capricious. ARC decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal detailed below. Any approval or disapproval by the ARC shall be in writing and in the case of a denial shall state the reasons for such denial. Decisions of the ARC are final; *however*, a Member can appeal in writing to the Board of Directors to reconsider its the decision. A request for reconsideration must be made in writing within fifteen (15) business days of the ARC's decision. The ARC will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The ARC will then in writing affirm, modify or withdraw its decision within twenty (20) business days after the meeting. The ARC may grant variances from the Architectural Guidelines when there is a valid justification, where the variance does not have a negative impact on the adjacent properties or the Property as a whole, which shall be determined in the sole and absolute discretion of the ARC, and where the variance is reasonable in relation to the overall character and nature of the area; provided, however, that no variances can be granted by the ARC as to specific covenants and restrictions set forth in this Second Amended Covenants, and the ARC may adopt specific guidelines in relation to any variance requests. Any application for a variance shall be pursuant to a written request addressing the above

criteria and all variance guidelines adopted by the ARC, and any grant or denial of a variance by the ARC shall be stated in writing, based on written findings.

7.8 Appeal of Final ARC Decision

All final decisions of the ARC shall be appealable. An Owner shall have 15 business days from the date of the ARC's final decision to file a notice of appeal with the Board. The notice shall include the basis for the appeal. The Board will set a hearing on the appeal within 30 days of receipt of the notice of appeal. The Board shall make a final decision at or within 30 days of the hearing. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the Architectural Guidelines and the provision of this **Article 7** shall be final, conclusive and binding as to all Persons and property benefitted or bound by the provision hereof.

7.9 Enforcement of Architectural Guidelines and Restrictions

Prior to completion of construction or action subject to ARC review, the ARC shall have primary responsibility to enforce the restrictions set forth in **Article 7**, any applicable Architectural Guidelines, and restrictions as set forth in any Supplemental Second Amended Covenants or governing document for a Sub-Association for which jurisdiction has been granted to the ARC. The ARC shall have the authority to revoke or suspend its approval and/or order the suspension or cessation of any Construction Activity for violation(s) of the Governing Documents or for failure to construct the project in accordance with the approved plans. In addition, the ARC shall have the authority to record a notice of such non-compliance in the Public Record.

The Association and the ARC through their authorized agents shall have the right to enter any Lot upon twenty-four (24) hours' notice (or such notice as is appropriate in the event of an emergency) to the Member or Member's agent for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling or alteration of any Improvement thereon is in compliance with plans or Construction Activity approved by the ARC, the applicable Architectural Guidelines or the terms of this Second Amended Covenants. The ARC, the Association or such officer, employee, or agent thereof shall not be deemed to have committed a trespass or wrongful act solely by reason of such action or actions under this **Section 7.9**. Notice as provided under this **Section 7.9** may be either in person, via telephone, e-mail, or in writing.

In addition to any other rights or remedies available to the ARC, the ARC shall have the right to suspend its review or temporarily suspend any approvals or certificates granted in the event an Owner is not in Good Standing.

7.10 Liability.

The standards and procedures established by this **Article 7** or the ARC are intended to enhance the overall aesthetics of the Property. None of the Association, or the ARC nor any of their respective officers, directors, employees or agents shall be responsible or liable for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental or quasi-governmental entity requirements, nor for ensuring the appropriateness of soils, drainage, and general site and geotechnical work. A consent or approval or certificate of substantial completion issued by the ARC means only that the ARC believes that the construction, alteration, installation or other work for which the consent, approval or certificate was requested complies with the applicable Architectural Guidelines. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby **(a)** complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, or any applicable covenants, conditions or resolutions, **(b)** is free from defects, errors or omissions, **(c)** is structurally sound, or **(d)** lies within the boundaries of a Lot or a Building Envelope, and by submitting materials to the ARC for its review, the applicant shall be deemed to have waived all claims against the ARC based on the foregoing disclaimed matters. None of the Association, the Board, the ARC, or any member or officer of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved or disapproved construction on or modifications to any Unit within the Property.

7.11 Existing Improvements.

For the avoidance of doubt, any reasonably permanent Improvements (such as buildings, residences, outbuildings, roads, driveways and similar improvements) which are existing on the Property at the time this Second Amended Covenants becomes effective and which were in compliance with all covenants, conditions, restrictions, laws, rules, regulations and ordinances when constructed shall not be deemed to be in violation of this Second Amended Covenants solely as a result of differences between the covenants, conditions and restriction set forth in this Second Amended Covenants and such covenants, conditions and restrictions that were in place at the time such reasonably permanent improvements were initially constructed or installed. The foregoing notwithstanding, any Construction Activity occurring after this Second Amended Covenants becomes effective will be required to comply with this Second Amended Covenants and the Architectural Guidelines.

ARTICLE 8: ENFORCEMENT AND REMEDIES

8.1 Procedure.

The Association shall have the right (but not the obligation) to enforce the provisions of any of the Governing Documents, through procedures adopted by resolution of the Board, abatement of the violation by the Association, or by

proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents.

8.2 Discretion.

The decision to have the Association pursue an enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: **(i)** the Association's position is not strong enough to justify taking any or further action; **(ii)** the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; **(iii)** although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending Association resources; or **(iv)** it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue or continue enforcement action.

Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time or under other circumstances, nor shall it preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Member from taking action at law or in equity to enforce the Governing Documents, including all such costs and fees for any appeal or enforcement of a judgment.

8.3 Costs of Enforcement.

Costs incurred for enforcing the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing or curing the violation, if undertaken by the Association, or any fines levied against the Member after the Member is determined by the Board to be in violation of the Governing Documents, shall be paid by the Member. Any costs incurred for enforcing the provisions of the Governing Documents, for correcting the defect or undoing the violation, or fine assessed against the Member that is not paid within sixty (60) days may be handled in accordance with **Section 8.3**.

Should any lawsuit, arbitration or other legal proceeding be instituted by a Member against the Association, or the Association against a Member alleged to have violated one or more of the provisions of the Governing Documents and should the Association be wholly or partially successful in such proceeding, the Member shall be obligated to pay all the costs of such proceeding, including, without limitation, reasonable attorney's fees and costs.

ARTICLE 9: INSURANCE, CASUALTY AND CONDEMNATION

9.1 Insurance.

(a) Required Coverages.

The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Property Insurance

Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name determined) for all insurable Improvements within the Area of Common Responsibility or otherwise owned by the Association to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements under current building ordinances and codes;

(ii) Commercial general liability insurance

On the Area of Common Responsibility and Improvements located thereon, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; *provided*, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(iii) Directors and officers liability coverage;

(iv) Commercial crime insurance, including fidelity insurance

Covering all Persons responsible for handling Association funds in an amount determined by the Board’s business judgment but not less than an amount equal to one-sixth of the annual revenue of the Association plus reserves on hand, or such lesser amount as is commercially reasonably obtainable. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(b) Policy Requirements.

All insurance coverage obtained by the Board shall (if reasonably available):

Be written with a company authorized to do business in Montana;

Be written in the name of the Association as trustee for the benefited parties. Policies on Area of Common Responsibility, Improvements located thereon and other Improvements owned by the Association shall be for the benefit of the Association and it's Members;

Not be brought into contribution with insurance purchased by Owners, occupants or their mortgagees individually;

Contain an inflation guard endorsement;

Include an agreed amount endorsement, if the policy contains a co-insurance clause;

Provide that each Member is an insured person under the policy with respect to liability arising out of such Member's interest as a member of the Association in the Area of Common Responsibility (provided, this provision shall not be construed as giving a Member any interest in the Area of Common Responsibility other than that of a Member);

Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Members, or on account of any curable defect or violation of any Member without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

(c) Waiver of Subrogation and Endorsements.

In addition, the Board shall use reasonable efforts to secure insurance policies which name the Members, collectively, as additional insureds for claims arising in connection with the ownership, existence, use or management of the Area of Common Responsibility, Improvements located thereon and other Improvements owned by the Association and provide:

A waiver of subrogation as to any claims against the Association's Board, Staff, officers and the Members and their Licensees and Invitees;

A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

An endorsement excluding Member's individual policies from consideration under any "other insurance" clause;

An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

A cross-liability endorsement that provides cross-liability coverage; and

A provision vesting in the Board exclusive authority to adjust losses; *provided, however*, no mortgagee having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

9.2 Casualty.

(a) Damage to Area of Common Responsibility, Improvements

In the event of damage or destruction to any part of the Area of Common Responsibility, Improvements located thereon or other Improvements owned by the Association, any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage in the estimation of the Board, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Area of Common Responsibility or Improvements, or if there are no insurance proceeds, the Board shall levy a Special Assessment pursuant to the Governing Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall not repair or reconstruct the damaged or destroyed Area of Common Responsibility or Improvements if **(i)** such repair or reconstruction would be illegal under any local, state or federal law, or **(ii)** within sixty (60) days after such damage or destruction the Board elects not to repair or reconstruct. If the Board elects not to repair or reconstruct as provided above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Members a Special Assessment for this limited purpose, if necessary.

(b) Damage to Lots

Subject to the terms of any Supplemental Second Amended Covenants or governing document of a Sub-Association, in the event of damage or destruction of the Improvements located on any Lot or any part thereof, the Owner of such Lot shall, at its sole cost and expense, with due diligence, either **(i)** cause the damaged or destroyed Improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or **(ii)** demolish the destroyed or damaged Improvements, in which event the rubble caused by such demolition shall be removed and the affected Lot graded and landscaped. If such repair or restoration or such demolition, debris removal, grading and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction,

or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Association may initiate proceedings under **Article 8**, inclusive of fining the Owner until such repair or restoration or such demolition, debris removal, grading and landscaping is commenced or re-commenced, as the case may be, unless the Owner can prove to the satisfaction of the Board that such failure is due to circumstances beyond the Owner's control. All Construction Activity commenced under this **Section 9.2(b)** shall be subject to ARC review and approval, which will not be unreasonably withheld. In addition to the remedies available pursuant to **Article 8**, the Association, acting through the Board, may undertake demolition, grading, and landscaping of the affected Lot and charge the Owner for the costs thereof as a Default Assessment.

9.3 Condemnation.

In the event the Area of Common Responsibility, Improvements thereon or other Improvements or property owned by the Association, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof, each Member will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Members in the proceedings incident to such taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Members to be used as follows:

If the taking involves a portion of the Area of Common Responsibility on which Improvements have been constructed, then, unless **(A)** restoration or replacement of such Improvements would be illegal under any state, local or federal law or **(B)** within sixty (60) days after such taking the Board elects not to restore or replace such Improvements, the Association shall restore or replace such Improvements so taken on the remaining land included in the Area of Common Responsibility to the extent lands are available therefore, in accordance with plans approved by the ARC and other governmental or quasi-governmental entity having jurisdiction over the Property. If such Improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such Improvements, the Board shall levy a Special Assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such Improvements.

If the taking does not involve any Improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of Improvements is completed, then the Association shall retain such excess proceeds and place them in the Association's reserve account.

ARTICLE 10: MORTGAGEE PROVISIONS

10.1 Notices of Action.

Any institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association in accordance with this **Section 10.1** shall thereby become an “Eligible Holder” for so long as such Person remains an institutional holder, insurer or guarantor of a first Mortgage and will be entitled to timely written notice of:

Any condemnation loss or any casualty loss of which the Association has notice which affects a material portion of the Area of Common Responsibility; or

Any foreclosure by the Association of a lien resulting from a delinquency in the payment of any Assessment, charge, fine, penalty or other amount payable by a Member with respect to a Lot subject to the mortgage of such Eligible Holder. Such notice shall be given at least thirty (30) days prior to the foreclosure.

The written request as required under this **Section 10.1** shall clearly state the legal description and address of the Lot as well as the name, mailing address, telephone number and e-mail address of the person who should receive the notices for the above listed actions. It is the sole obligation of the Eligible Holder to keep this information up to date with the Association and deliver notice as provided herein to the Association when this information changes. The Association will not be in default for failure to provide the above-listed notices if the Eligible Holder does not provide the Association with accurate information.

Any written notice required under this **Section 10.1** to be provided by the Association to an Eligible Holder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by certified mail, first-class, postage pre-paid, return receipt requested to the address provided by the Eligible Holder.

10.2 Payment of Unpaid Assessment.

Any mortgagee or other lienholder holding a lien on a Lot may pay any unpaid Assessment with respect to such Lot, together with any and all costs and expenses incurred with respect to the Assessment lien securing such unpaid Assessment.

ARTICLE 11: GENERAL PROVISIONS

11.1 Amendment.

This Second Amended Covenants may be amended, in whole or in part, for any reason including but not limited to adding wholly new provisions and new restrictions, by an Affirmative Vote of a Majority of the Members. The Vote may be made at a meeting, duly called for the purpose of Amendment, by mail in ballot, by a combination of the two.

CERTAIN COVENANTS MAY NOT BE AMENDED

Any covenant which is included herein as a condition of the preliminary plat approval and required by the County Commission of Broadwater County may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in these covenants and the governing body of said county.

The covenants contained in 2A and 5A as to only one home per lot and no further subdivision may not be amended.

11.2 Interpretation of the Second Amended Covenants.

The Association, by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Second Amended Covenants. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and the provisions hereof.

11.3 Attorneys' Fees.

In the event suit or action is instituted for a Second Amended Covenants of rights hereunder or to enforce any of the provisions of this Second Amended Covenants or the other Governing Documents, the parties agree that the prevailing party shall be entitled to all reasonable costs, fees, and paralegals' and attorneys' fees and costs (as calculated on an hourly fee basis and not a contingency fee basis) and all costs of collection and enforcement, including, but not limited to, any appeals, from the non-prevailing party.

11.4 Limited Liability.

None of the Association, the ARC, the Board, or any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter related to the Governing Documents if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification to the extent required under applicable law or any Governing Document.

11.5 Successors and Assigns.

Except as otherwise provided herein, this Second Amended Covenants shall inure to the benefit of the Association, and each Member and shall be binding upon the Association, each Member and their respective heirs, devisees, personal representatives, successors and assigns.

11.6 Severability.

A determination of invalidity of any one or more of the provisions or conditions hereof, or any portion thereof, by judgment, order or decree of a court shall not affect in any manner the other provisions or portions of provisions hereof which shall remain in full force and effect.

11.7 No Waiver.

Failure to enforce any provisions of this Second Amended Covenants shall not operate as a waiver of any such provision or of any other provision of this Second Amended Covenants.

Article 12: DECLARANT'S RIGHTS

12.1 Article 12 shall not be amended unless the Declarant agrees to the amendment in writing.

12.2 Declarant's Easements and Related Rights.

(a) Declarant hereby reserves to itself for itself and for the benefit of its Licensees, Invitees, successors and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Area of Common Responsibility as may be reasonably necessary to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any Special Declarant Right; (iii) make Improvements within the Property on property owned by the Declarant; and (iv) maintain, repair, access, replace, relocate, construct, use and operate utilities where they are located within the Property (and any other property that becomes subject to this Declaration) as of the date of this Declaration or any new or relocated utilities.

(b) Declarant hereby reserves to itself for itself and for the benefit of its Licensees, Invitees, successors and assigns, the right from time to time to establish, relocate, and use non-exclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Property for uses for the Association or Declarant, including, without limitation, in relation to any Improvements in order to serve all persons residing, visiting or doing business within the Property; *provided* that any such easement, lease, permit or license does not unreasonably impair the use of the Area of Common Responsibility for its intended purpose.

(c) In no event shall the passage of time or Turnover of the Association to the Owners prevent the Declarant from utilizing any easement, right or privilege, granted by this Declaration or otherwise, upon the Area of Common Responsibility or portions of the Property owned by Declarant that is necessary or advisable in

connection with the development and sale of real property or amenities in relation to the Property.

12.3 Special Declarant Rights.

Declarant hereby reserves for itself and its successors and assigns the following rights, which rights may be exercised at any time during the Declarant Control Period (collectively the “Special Declarant Rights”):

- (a) The right to complete any Improvements on real property owned by Declarant within the Area of Common Responsibility or shown on any Plat;
- (b) The right to construct and maintain sales offices, trailers, booths, Improvements or other structures used for sales or promotional purposes, management offices and models on any property owned by Declarant or the Area of Common Responsibility; and the right to construct and maintain signs advertising the properties therein. The number, size and location of any such sales structures and signage, management offices or models or the relocation thereof shall be determined by Declarant;
- (c) The right to exercise any development right, including, without limitation, the right to add real property to the Property pursuant to **Article 13** and to make that real property subject to this Declaration and the right to amend this Declaration to change the uses for real property or create additional Lots within the Property, the right to subdivide the Lots or CI Lot, the right to combine Lots, the right to convert any and all real property owned by Declarant into an Area of Common Responsibility, the right to record Supplemental Declarations and governing documents of any Sub-Association;
- (d) The right to create, relocate and use easements through the Area of Common Responsibility for the purpose of making Improvements within the Property or within real property which may be added to the Property;
- (e) The right to designate real property owned by Declarant within the Property for fire, police, utility service operation facilities (*e.g.*, electric power, propane, sanitation, etc.), water and sewer facilities, public schools and parks, and other public facilities;
- (f) The right to maintain construction equipment on the Property that is necessary for the development of the Property.
- (g) The right to merge and consolidate the Association with a property owners association of the same form of ownership; and
- (h) The right to accept, establish and amend reasonable use restrictions with respect to the Property.

12.4 Transfers of Special Declarant Rights and Rights as Declarant. The term “Declarant’s Rights” means, collectively, the Special Declarant Rights defined herein as well as all other rights of the Declarant under this Declaration, the other Governing Documents, and the rights of a declarant under applicable law.

(a) The Declarant’s Rights may be transferred by the Declarant in whole or in part during the Declarant Control Period; *provided*, (i) the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration and the other Governing Documents, and (ii) any such transfer shall only be effective if it is in a written instrument signed by Declarant and the transferee and recorded in the Public Record.

(b) Upon transfer of the Declarant’s Rights, the liability of a transferor is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer.

(ii) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from and after the date of such transfer.

(c) Upon transfer of the Declarant’s Rights, the liability of a transferee is as follows:

(i) A transferee of the Declarant’s Rights is subject to all obligations and liabilities imposed on the Declarant by this Declaration arising from and after the date of such transfer.

12.5 **Rights of Declarant after the Turnover Date.** After the Turnover Date, Declarant, if still an Owner, will continue to have all of the rights and duties given to Members under the Governing Documents. Furthermore, as the Turnover Date is set, by the Broadwater County Commission, to expire prior to the Developer’s development of the Subdivision, Declarant shall have the following rights in relation to finishing the Development until Declarant sells the final Lot or December 30, 2035, whichever is earlier:

(a) Declarant shall be able to Improve any Lot owned by Declarant and otherwise develop any portion of the Property owned by the Declarant free of any review of the ARC or Association.

(b) Declarant shall not be required to pay any Assessment for any Lot owned by the Declarant or assigns of the Declarant, so long as the Assign is the same ownership of the Declarant or another developer who purchases the bulk of the Lots owned by the Declarant. (i.e. For liability purposes, Declarant may transfer some Lots into a different entity help by the same ownership as the Declarant.)

- (c) Declarant shall retain the right to amend these Covenants, if necessary, in order to sell any Property.

ARTICLE 13: COUNTY REQUIRED COVENANTS

The following Covenants, Conditions and Restrictions are required by Broadwater County as a condition of approval of the subdivision which is the subject of these Covenants. The following Covenants may not be amended, modified, revoked, altered, terminated nor extinguished without the prior written consent of the Board of County Commissioners of and for Broadwater County.

- 13.1 Owners are hereby notified of the potential health risk from radon concentrations and that such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures.
- 13.2 Owners are hereby notified that all dwelling units within the subdivision should be constructed to specifications which meet or exceed equivalent provisions in the applicable state building code for this seismic zone the proposed subdivision is in.
- 13.3 Any additional, replacement, or relocated utility lines shall be installed underground, in accordance with the County Subdivision Regulations, unless otherwise determined by the utility provided.
- 13.4 Owners are hereby notified that there is a “no vehicular access” restriction along U. S. Highway 287, with the exception of the approaches for the integral access road; along the northern property line restricting access to Wheatland Road, except at the easement for the internal access road and along the western boundary restricting direct access to the existing 60' easement, except at the easements for the internal access roads.
- 13.5 Any exterior lighting shall be directed downward to minimize visibility beyond the property lines.
- 13.6 Owners hereby waive the right to protest the creation of a special improvement district or rural improvement district for the purpose of providing community water and/or wastewater treatment system improvements and/or maintenance, but not the right to comment on the method or the amount.
- 13.7 Owners, and any heirs, successors and assigns, and all future owners of property within the subdivision, agree herein to hold Broadwater County harmless and indemnify Broadwater County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County’s costs and attorney’s fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:

I. Earthquake fault zone and any seismic activity;

ii. Water availability;

- 13.8 The storage of foods, garbage, or feeding domestic pets outdoors or other activities which may create an attractive nuisance for wildlife species is prohibited. All cats and dogs must be restrained, penned or otherwise under the control of their owner at all times.
- 13.9 Owners are hereby notified of the presence of agricultural operations in the vicinity. Specifically, Owners are informed that nearby uses maybe agricultural. Owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies, and machinery noises. Standard agricultural practice feature the use of heavy equipment, burning, chemical sprays, and the use of machinery early in the morning and late into the evening.
- 13.10 Each lot shall be maintained in a clean, attractive, and weed-free manner; Noxious weeds must be pulled, sprayed or cut prior to seed maturity. Owners are responsible for noxious weed control on their own individual lots as stated in the Montana County Noxious Weed Control Act (7-22-2116, MCA). The Owners Association is responsible for noxious weed control in all parks, open spaces, community areas, trails and roadways within the subdivision. The Association will also act as the contact point for any noxious weed complaints within the subdivision. The control of noxious weeds by the Owners Association on those areas for which the Owners Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153). Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after 10 days notice from the Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.
- 13.11. Owners have waived the right to protest the creation of a special improvement district or rural improvement district for the purpose of road maintenance, mosquito control or equitably funding parks and maintenance of parks, but not the right to comment on the method or amount.
- 13.12. Lots in the subdivision may be subject to impact fees if those fees are in place prior to Declarant's sale of the lots and are properly adopted pursuant to MCA 7-16-101 et seq. (2007) and as amended.

IN WITNESS WHEREOF, the undersigned Declarant filed this Second Amended Covenants of Protective Covenants, Conditions and Restrictions for the Westside Trails Subdivision.

THREE FORKS PROPERTIES, LLC

By: Robert Joseph Lodge

12/26/2024

Name: Robert Joseph Lodge

Title: Managing Member

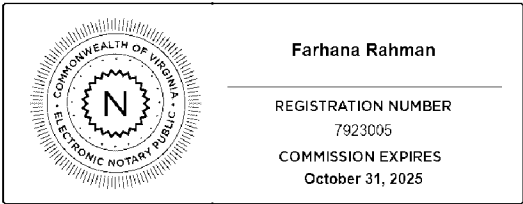
STATE OF Virginia)
County of Prince William county) :SS

This Instrument was ACKNOWLEDGED before me this 26th day of December, 2024,
by Robert Joseph Lodge, the managing member of Three Forks Properties, LLC.

Farhana Rahman
Notary Public
Farhana Rahman

Printed Name
Residing Prince William county at
Virginia
My Commission Expires: 10/31/2025

(SEAL)



Notarized remotely online using communication technology via Proof.

EXHIBIT A
of
Second Amended and Restated Second Amended Covenants of
Covenants, Conditions and Restrictions
for Westside Trails Subdivision

LEGAL DESCRIPTION OF THE PROPERTY

Westside Trails Subdivision, Phases 1, 2 and 3 and remainder tract, Section 18,
T2N, R1E, Broadwater County, Montana

(Declarant reserves the right to Subdivide the Remainder Tract, which is Phase 4
of the Subdivision.)